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Via Certified Mail –
Return Receipt Requested

NOV 20 2019

November 12, 2019

Carmel Area Wastewater District
Attn: Ed Waggoner, Operations Superintendent
Members of the Board of Directors
Head of Agency
3945 Rio Road
Carmel, CA 93923

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Waggoner, Members of the Board, and Head of Agency:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and/or operation of the Carmel Area Wastewater District's Wastewater Treatment Plant ("Facility") and associated sewer collection system.

River Watch hereby places the Carmel Area Wastewater District ("District"), as owner and operator of the Facility and associated sewer collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board Central Coast Region, Water Quality Control Plan ("Basin Plan"), as the result of violations of the District's National Pollution Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, which has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in an NPDES permit define the scope of the authorized exception to the CWA § 301(a),

33 U.S.C. § 1311(a) prohibition such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the District is in violation of the CWA by violating the terms of its NPDES permit.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the District's operations in the region at issue in this Notice is the Regional Water Quality Control Board Central Coast Region ("RWQCB-Central Coast").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

The specific Orders alleged to have been violated are:

A. Order No. R3-2014-0012, NPDES No. CA0047996, *Waste Discharge Requirements For The Carmel Area Wastewater District Treatment Plant* ("NPDES Permit"). River Watch has identified specific violations of the NPDES Permit including raw sewage discharges and failure by the District to either comply with or provide evidence that it has complied with all the terms of its NPDES Permit.

B. Order No. 2013-0001-DWQ, NPDES No. CAS000004, *General Permit For Waste Discharge Requirements (WDRs) For Storm Water Discharges From Small Municipal Separate Storm Sewer Systems (MS4s)* ("MS4 Permit") governing the discharges from the municipal separate storm sewer systems draining the watersheds within the Central Coast Region.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from November 8, 2014 to November 8, 2019, the District has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts

i. Sanitary Sewer Overflows Occurrence

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage is discharged above ground from the collection system prior to reaching the Facility are alleged to have occurred both on the dates identified in California Integrated Water Quality System ("CIWQS") Interactive Public SSO Reports and on the dates when no reports were filed by the District, all in violation of the CWA.

The District's aging sewer collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure resulting in SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains connected to adjacent surface waters including Carmel Bay, Carmel River Beach, and Hatton Canyon Creek – all tributaries of the Pacific Ocean and waters of the United States.

A review of the CIWQS Spill Public Report – Summary Page identifies the "Total Number of SSO locations" as **68**, with **190,418** "Total Vol. of SSOs (gal)." Of this total volume, the District admits at least **152,900** gallons, or **80%** of the total, reached a surface water. Of the 190,418 gallons of sewage spilled, only 15,160 gallons or 7% of the total were reported as being recovered. The remaining volume was discharged into the environment posing both a nuisance pursuant to California Water Code § 13050(m), and an imminent and substantial endangerment to public health and the environment.

A review of the CIWQS SSO Reporting Program Database specifically identifies 2 recent SSOs reported as having reached a water of the United States:

> February 22, 2017 (Event ID# 833147) – an SSO estimated at 145,000 gallons occurred at Hatton Canyon MH # P8-01 (Coordinates 36.554306 -121.905192). The reported cause of the spill was pipe structural problem/failure. The entire 145,000 gallons flowed from the side of the manhole into Hatton Creek which flows into the Carmel River and then the Pacific Ocean at Carmel Bay.
>
> December 21, 2014 (Event ID # 811608) – an SSO estimated at 4,500 gallons occurred at Lower Hatton Canyon as a result of root intrusion (Coordinates 36.545275 -121.907094). All of the 4,500 gallons were reported as having discharged into Hatton Creek.

The above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. This provision of the Act states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

Further, these alleged discharges are violations of the District's NPDES Permit, which states in Section II. Discharge Prohibitions:

A. Discharge of treated wastewater to the Pacific Ocean at a location other than those listed below is prohibited.

1. Carmel Area Wastewater Treatment Plant Ocean Outfall (36° 32' 00" N. Latitude, 121° 55' 43" W. Longitude), and

2. Approved recycled water reuse sites authorized by Order Nos. 93-72 and 94-04 or other sites subsequently permitted.

B. The overflow or bypass of wastewater from the Discharger's collection, treatment, or disposal facilities and the subsequent discharge of untreated or partially treated wastewater, except as provided for in Attachment D, Standard I.A.7 (Bypass) is prohibited."

C. Discharge of any waste in any manner other than as described by this Order, excluding storm water regulated by General Permit No. CAS000001(Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities), and excluding the reuse of treated wastewater in accordance with California Water Code sections 13500 - 13577 (Water Reclamation) and California Code of Regulations title 22, sections 60301 - 60357 (Water Recycling Criteria), is prohibited.

E. Discrete point source discharges of sewage in a manner that alters conditions from those occurring naturally in the area of the discharge to Carmel Bay, an Area of Special Biological Significance (ASBS), are prohibited.

ii. <u>Inadequate Reporting of Discharges- Incomplete and Inaccurate SSO Reporting</u>

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The District's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would identify the causes and the potential repairs ensuring these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by the District as partially reaching a surface water did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the District received notification of an SSO,

the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

> February 3, 2017 (Event ID #832509) --The spill start time is reported as 11:24. Agency notification time is reported as 10:47. The operator arrival time is reported as occurring on February 06, 2017 at 11:05 am and the spill end time as 11:55 am. The cause of the spill is reported to be root intrusion. Total volume of the spill is reported as 1,648 gallons all of which are reported as having reached loose dirt and grass in the back yard of a residence.
>
> July 16, 2016 (Event ID #826427) -- The spill start time is reported as 03:00. Agency notification time is reported as 04:58 and operator arrival time as 05:25. The spill end time is listed as 04:00. The Explanation of volume estimation method used is "two eye witness accounts of potential volume and times." This spill was reported as having a total spill volume of 10 gallons all of which are claimed to have reached land, despite having a final spill destination of the storm drain catch basin.
>
> October 16-17, 2015 (Event ID #818816) -- The spill start time is reported as 18:05 on October 16, 2015. The agency notification is reported as 10:48 the next day. The operator arrival time is reported as 11:38 and the spill end just a few minutes later at 11:42. The final spill destination of this SSO was reported as "Separate Storm Drain."

Given the unlikely accuracy of the times, intervals, and spill volumes provided in these reports, it is difficult to consider the stated volumes as accurate. Without accurately reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

iii. Failure to Mitigate Impacts

River Watch contends the District fails to adequately mitigate the impacts of SSOs. The District is a permittee under the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements,* Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires the District to take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and the impact of the release. As the District is underestimating SSOs which reach surface waters, River Watch contends the District is not conducting sampling on most SSOs.

The EPA's "*Report to Congress on the Impacts and Control of CSOs and SSOs*" (EPA, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within areas of the District's SSOs.

Neighboring waterways include sensitive areas for the California Red-legged Frog and Steelhead trout. River Watch can locate no record of the District performing any analysis of the impact of its SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore waterbodies designated as critical habitat from the impacts of SSOs.

B. Failure to Comply with the MS4 Permit.

The District's MS4 is a system of conveyances intended to carry stormwater. It is connected to storm drain pipes which discharge into neighboring surface waters. However, SSOs bring sewage into the MS4 and in turn into waterways connected to, and downstream of, the MS4. River Watch contends the District is failing to adequately comply with the discharge prohibitions of its MS4 Permit, which states in relevant part under Section B. Discharge Prohibitions:

> 1. Discharges of waste from the MS4 that are prohibited by Statewide Water Quality Control Plans or applicable Regional Water Quality Control Plans (Basin Plans) are prohibited.
>
> 2. Discharges of storm water from the MS4 to waters of the U.S. in a manner causing or threatening to cause a condition of pollution or nuisance as defined in Water Code § 13050 are prohibited.
>
> 3. Discharges through the MS4 of material other than storm water to waters of the U.S. shall be effectively prohibited, except as allowed under this Provision or as otherwise authorized by a separate NPDES permit. The following non-storm water discharges are not prohibited provided any pollutant discharges are identified and appropriate control measures to minimize the impacts of such discharges, are developed and implemented under the Permittee's storm water program. This provision does not obviate the need to obtain any other appropriate permits for such discharges. (Fifteen specific, non-storm water discharges are then listed.)
>
> 4. Discharges in excess of an amount deemed to be incidental runoff shall be controlled...
>
> 5. Discharge to Areas of Special Biological Significance (ASBS) is prohibited except in compliance with the ASBS Special Protection Provisions in Attachment C. Regulated Small MS4s that discharge to an ASBS are listed in Attachment D and are subject to the ASBS Special Protection Provisions.

All SSOs which reach a storm drain or storm drain conveyance are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act. In addition, all of these discharges pose both a nuisance pursuant to California Water Code § 13050(m), and an imminent and substantial endangerment to health and the environment.

C. Collection System Subsurface Discharges

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewer collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, and eroded segments in the District's sewer collection system into groundwater hydrologically connected to surface waters including, but not limited to Carmel Bay, Carmel River Beach, and Hatton Canyon Creek. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage. Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as testing of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found is a violation of the District's NPDES Permit and thus the CWA.

D. Violation of Effluent Limitations and Monitoring Requirements

A review of the District's Self-Monitoring Reports ("SMRs") identifies the following violations of effluent limitations imposed under the District's NPDES Permit:

1 violation - III. Effluent Limitations and Discharge Specifications, A. Effluent Limitations - Discharge Point 001; 1. Final Effluent Limitations; a. Table 4. Effluent Limitations at EFF-001, Settleable Solids, Instantaneous Maximum limit is 3.0 ml/L.

> (October 31, 2017) Settleable Solids Instantaneous Maximum limit is 3 ml/L and reported value was 5 ml/L at EFF-001. Event ID# 1035611

1 violation - III. Effluent Limitations and Discharge Specifications, A. Effluent Limitations - Discharge Point 001; 1. Final Effluent Limitations; a. Table 4. Effluent Limitations at EFF-001, Total Suspended Solids, Daily Maximum limit is 90 mg/L.

> (October 25, 2017) Total Suspended Solids (TSS) Daily Maximum limit is 90 mg/L and reported value was 105 mg/L at EFF-001. Event ID# 1035610

E. Violations of Receiving Water Limitations and Impacts to Beneficial Uses

The Pacific Ocean, Carmel Bay, Carmel River Beach, Carmel River, Hatton Canyon Creek, and the underlying groundwater have numerous beneficial uses as set forth in the RWQCB-Central Coast Basin Plan. SSOs reaching these waters cause prohibited pollution by unreasonably affecting these beneficial uses.

Carmel Bay is adjacent to the city of Carmel-by-the-Sea on California's central coast. Carmel Bay is four miles long and two miles wide with its mouth about three miles across. It's coastline includes Carmel City Beach and Carmel River State Beach with wildlife largely protected by the Carmel Bay Ecological Reserve. Several areas in Carmel Bay have been designated marine protected areas under California's Marine Life Protection Act. Carmel Bay State Marine Conservation Area lies entirely underneath Carmel Bay. Carmel Pinnacles State Marine Reserve and Point Lobos State Marine Reserve are partially underneath Carmel Bay.

Carmel River State Beach is a 1-mile long beach in Carmel Bay which protects a large amount of land primarily consisting of wetlands at the mouth of the Carmel River, known as the Carmel River Lagoon and Wetlands Natural Preserve. The Lagoon attracts many migratory birds including the Great Blue Heron, Virginia Rail, Brown Pelican, Greater Yellowlegs, and many types of gulls, egrets, turns, Downy Woodpeckers, Vireos, and Warblers.

Carmel Bay State Marine Conservation Area extends from Pescadero Point in Stillwater Cove in the north to the rocky point on the north side of Monastery Beach in the south. The marine protected area covers 2.12 square miles. Habitats protected this Conservation Are include kelp forest, sandy beach, submarine canyon head and surfgrass. Tourists, divers, and kayakers are attracted to Carmel Bay for its unique pinnacle formations, granite reefs and kelp forests.

Discharges in excess of receiving water and groundwater limitations reaching these waters cause prohibited pollution by unreasonably affecting their beneficial uses. The NPDES Permit Section IV. Receiving Water Limitations, A. Surface Water Limitations, provides "The following receiving water limitations are based on water quality objectives (Water-Contact Standards) contained in the Ocean Plan and are a required part of this Order." and continues on to list 17 prohibitions. River Watch finds insufficient information in the public record demonstrating the District has monitored for and complied with these receiving water standards. River Watch is understandably concerned regarding the effects of discharges to beneficial uses applicable to Hatton Creek, Carmel River, Carmel River Beach, Carmel Bay and the Pacific Ocean, and the effects of both surface and underground SSOs on critical habitat in and around this diverse and sensitive ecosystem.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the Carmel Area Wastewater District and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the District which relate to its ownership and operation of the Facility and associated sewer collection system, as further described in this Notice.

The District, formed in 1908, is one of the oldest sanitary districts in the state, and an independent political entity operating under authority of the California State Health and Safety Code. Governance consists of a five-member Board of Directors elected for terms of four years each.

The District is located on the Monterey Peninsula in Monterey County, California, approximately 125 miles south of San Francisco. It serves an area bounded by Carmel Bay to the west, Carmel Highlands on the south and Del Monte Forest on the north. Service extends as far east as Quail Meadows and Del Mesa Carmel. Average annual rainfall is 18.5 inches and generally occurs between November through April.

The Facility treats domestic and commercial wastewater originating in service areas of District, servicing approximately 11,000, and the Pebble Beach Community Services District, servicing approximately 4,500. The sewage collection system is composed of some 83 miles of gravity sewers ranging in size from 6-inches to 27-inches in diameter together with nearly 5 miles of force mains and seven pump stations within the existing service area of Carmel and outlying County areas including Carmel Woods, Hatton Fields, portions of lower Carmel Valley, Carmel Meadows, Hacienda Carmel, Del Mesa Carmel, Quail Meadows, and several individual lots in the vicinity. The District owns and has maintenance responsibility for the main sewers located in the public right-of-way and in easements on private property.

As of 2016, the average age of the collection system is 58 years, with the oldest lines being 90 years. Main sewer lines are predominantly vitrified clay pipe with cement mortar joints, and six inches in diameter. Over 90% of the main sewer lines were installed prior to the introduction of modern pipe joints such as compression gaskets, which were not available until the 1960's and the introduction of improved vitrified clay pipe manufacturing standards initiated in the mid 1950's.

Treatment components include influent flow monitoring, bar screens, barminutors, an aerated grit tank, primary settling basins, four secondary aeration basins, and secondary clarifiers. Secondary treated wastewater is chlorinated and dechlorinated and is either diverted to tertiary treatment or is metered prior to discharge.

Waste activated sludge is thickened by dissolved air flotation and blended with primary solids before anaerobic digestion. Digested sludge is dewatered by belt filter press and hauled offsite for disposal at the Monterey Regional Waste Management District Landfill.

The tertiary treatment system provides reclaimed wastewater for irrigation of seven local golf courses, one equestrian center, one private school, and some smaller landscaped areas. Tertiary treatment was upgraded to microfiltration and reverse osmosis (MF/RO) in the fall of 2008.

Treated secondary effluent is filtered using a submerged microfiltration system which produces filtrate under vacuum conditions by a filtration pump. The system contains three cells with a total filtrate capacity of 1.9 MGD. The microfiltration system serves as a pretreatment to reverse osmosis permeate. Reverse osmosis treatment consists of three independent, 2-stage

RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the District's staff to tailor remedial measures to the specific operation of the Facility and associated collection system.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, fishing, horseback riding, hiking, photography or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the District's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $54,833.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the District to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

Service List

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